

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:13-cr-00076-01

WILLIAM PONDER,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

On November 2, 2014, the United States Sentencing Guidelines were amended to reduce the guidelines in Section 2D1.1 by two levels for most drug offenses. (U.S.S.G. Amendment 782, Appx. C). Section 1B1.10 gives retroactive effect to these reductions and sets an effective date of November 1, 2015, for retroactively reduced sentences. On May 5, 2015, the Court entered an *Order* (Document 63) appointing the Federal Public Defender to represent the Defendant and directing the parties to respond with their positions respecting application of Amendment 782 to the Defendant's case.

The Court has received and considered the original Presentence Investigation Report (PSR), original Judgment and Commitment Order and Statement of Reasons, plea agreement, and the addendum to the PSR from the Probation Officer. In addition, the Court has reviewed the responses from the United States (Document 64) and the Defendant (Document 65), submitted pursuant to the Court's *Order* (Document 63). The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

The Defendant pled guilty to distribution of a quantity of oxycodone, in violation of 21 U.S.C. § 841(a)(1), on October 16, 2013. The PSR attributed 1,780 30-milligram oxycodone pills, 40 grams of cocaine, and 5.5 ounces of marijuana to the Defendant, which converts to a total of 365.735 kilograms of marijuana equivalency. That corresponded to a base offense level of twenty-six (26). He received a two level increase for possessing firearms in connection with his drug offence, and a three-level reduction for acceptance of responsibility, resulting in a total offense level of twenty-five (25). The Defendant had no criminal history points at the time of his conviction, resulting in a criminal history category of I. His original guideline range was 57 to 71 months. On February 6, 2014, the Court imposed a sentence of fifty-seven (57) months.

Under the amended United States Sentencing Guidelines, the Defendant's total offense level is twenty-three (23). The revised guideline imprisonment range is 46 to 57 months. He is, therefore, eligible for a sentencing reduction.

During his term of incarceration, the Defendant has paid his special assessment in full through participation in the inmate financial responsibility program. He has complied with DNA collection requirements. He has enrolled in the Residential Alcohol and Drug Treatment Program and the 40-hour drug education program, but is on the waiting list for both programs. The Defendant received disciplinary sanctions for failing to follow safety regulations on April 24, 2014.

The United States does not object to a sentencing reduction for the Defendant. The Defendant argues that he was originally sentenced to the bottom of his guideline range, and should receive a sentence reduction to forty-six (46) months, at the bottom of his amended guideline range.

Having considered the Defendant's original and amended guideline ranges, the original sentencing materials, the addendum to the PSR, and the parties' responses, the Court **ORDERS** that the Defendant's base offense level be reduced by two levels, to twenty-four (24). After consideration of the two-level firearm enhancement and the three-level decrease for acceptance of responsibility, the Defendant's new total offense level is **twenty-three (23)**. Given his criminal history category of **I**, his offense level establishes a revised guideline imprisonment range of **46 to 57 months**. After careful consideration of all of the relevant information, the Court further **ORDERS** that the Defendant's sentence be **REDUCED** to **forty-six (46) months**.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to the Defendant and counsel, to the United States Attorney, to the United States Probation Office, and to the Office of the United States Marshal.

ENTER: December 11, 2015



IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA